

Before the
Federal Communications Commission
Washington, D.C. 20554

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In the Matter of)	EB Docket No. 03-16
)	
NOS Communications, Inc.,)	File No. EB-02-TC-1
Affinity Network Incorporated and)	
NOSVA Limited Partnership)	NAL/Acct. No. 200332170003
)	
Order to Show Cause and)	FRN: 0004942538
Notice of Opportunity for Hearing)	

**ORDER TO SHOW CAUSE AND
NOTICE OF OPPORTUNITY FOR HEARING**

Adopted: April 2, 2003

Released: April 7, 2003

By the Commission:

I. INTRODUCTION

1. In this Order to Show Cause and Notice of Opportunity for Hearing, we commence an evidentiary hearing to determine whether: (1) the Commission should revoke the operating authority of NOS Communications, Inc. ("NOS"), Affinity Network Incorporated ("ANI"), and NOSVA Limited Partnership ("NOSVA") (collectively "NOS/ANI" or the "Companies"); (2) NOS/ANI and its principals should be ordered to cease and desist from any

¹ NOS Communications, Inc. is a Maryland corporation, whose principal address is Ste. 508, 6110 Executive Boulevard, Rockville, MD 20852. Maryland Dept. of Assess. and Taxation. (Note: The D&B Business Information Report reports a headquarters location at 4380 Boulder Highway, Las Vegas, NV 89121). NOS also conducts business under the following business names: International Plus, O11, INETBA (or Internet Business Association), and I-Vantage. See Schedule A, List of Company Affiliate "Providers", Letter from Shawn M. Elicegui of Lionel Sawyer & Collins on behalf of the Companies to the Nevada Office of Attorney General, dated April 5, 2002 ("Lionel Sawyer Letter"), File No. EB-02-TC-I 19. ANI is a California corporation, whose mailing address is 4380 Boulder Highway, Las Vegas, NV 89121. California Secretary of State. (Note: The D&B Business Information Report reports an address at 9839 Whitwell Drive, Beverly Hills, CA 90210). ANI also conducts business under the business names HorizonOne Communications ("HorizonOne") and QuantumLink Communications ("QuantumLink"). See Lionel Sawyer Letter, File No. EB-02-TC-I 19. NOSVA is a Maryland corporation with principal offices at 6701 Democracy Boulevard, Ste 811, Bethesda, MD 20817. Maryland Dept. of Assess. and Taxation. (Note: The D&B Business Information Report reports an address at Ste. 508, 6110 Executive Boulevard, Rockville, MD 20852). NOSVA also conducts business under the business name of CierraCom Systems. See Lionel Sawyer letter, File No. EB-02-TC-I19. All of the entities identified herein have in common either the same principals or officers. For purposes of this order, the term "NOS/ANI" (collectively "Companies") includes all of NOS's, ANI's, and NOSVA's respective entities, identified or unidentified, including any of their respective successors or assigns.

future provision of interstate common carrier services without the prior consent of the Commission; and (3) a forfeiture against NOS/ANI is warranted and, if so, the amount of the forfeiture.

2. As set forth in detail below, it appears that NOS/ANI may have willfully or repeatedly violated sections 201(b) of the Communications Act of 1934, as amended (the "Act"),² by conducting a misleading marketing campaign (the "Winback Campaign") apparently designed to improperly induce former customers into authorizing switches back to NOS/ANI. These improper inducements apparently included the Companies contacting their former customers and describing "problems" that the customers' chosen carriers were allegedly having in completing the customers' requests to establish new service. NOS/ANI apparently threatened their former customers with loss of service unless they agreed to retain NOS/ANI services as a "temporary measure." Under coercion, some of these customers signed Letters of Agency ("LOAs") that authorized the Companies to be their preferred carriers, believing that doing so was necessary to keep receiving service while their new preferred carriers completed their switches. The representations of NOS/ANI to their former customers appear to be knowingly false. In reality, the consumers had already been switched to their new preferred carriers and the Companies' marketing campaign was an apparently misleading scheme to trick consumers into returning to the Companies' services. The Companies' apparent campaign to misleadingly induce former customers into signing LOAs raise serious questions regarding whether NOS/ANI and its principals are qualified to be certified to provide interstate telecommunications services. The hearing will address these questions, as well as whether a forfeiture should be issued to NOS/ANI for the apparent willful and repeated violation of section 201(b) of the Act's³ prohibition against unjust and unreasonable practices.

II. BACKGROUND

3. NOS/ANI are switchless resellers of MCI long distance service.⁴ Their customers

² 47 U.S.C. § 201(b).

³ See *Id.*

⁴ See letter from Kecia Boney Lewis of Worldcom, dated January 24, 2003 ("January 24, 2003 Worldcom Letter"), File EB-02-TC-119. Although NOS, ANI, and NOSVA are set up as different corporations, they apparently share the same offices, directors, and major shareholders. They also appear to share the same employees and conduct telemarketing activities from shared facilities in Las Vegas, NV. Although the companies report separate principal places of business in Las Vegas, NV (NOS and NOSVA) and Los Angeles, CA (ANI), Marsha Gibbs, a NOS/ANI employee, identified herself in recorded conversations as calling from various of the entities named herein from the same telephone numbers in Las Vegas and the same corporate location in Las Vegas. For whichever entity she identified, she frequently told the consumer that she was calling from the corporate office. For example, although ANI is a California corporation with a principal address in Los Angeles, CA, in one recorded conversation, Ms. Gibbs told a consumer that she was calling from the corporate office in Nevada and gave a Nevada telephone number where she could be reached.

are primarily small and medium-sized companies. NOSiANI operates as a common carrier subject to Title II of the Act. Specifically, NOS/ANI currently provides or has provided resale interstate long distance telecommunications services to consumers in numerous states. Under the regulatory scheme established by the Act and the Commission's rules, NOSiANI is classified as a nondominant interexchange carrier.⁵ As such, it is considered to have "blanket" authority to operate domestic common carrier facilities within the meaning of section 214 of the Act.⁶

4. The Enforcement Bureau (the "Bureau") initiated this investigation against the companies after receiving information about the Companies' marketing campaign from Mr. Robert Faulkner, a former NOSiANI employee.⁷ Based upon the information provided by Mr. Faulkner,⁸ the Bureau contacted numerous consumers to investigate the allegations. All of the

ANI Communications in the corporate office

* * *

I'm in Nevada, originally from Chicago. Our corporate office was in Bethesda [Maryland], but we transferred here... [702] 949-4019. And my secretary's name is Megan. And if I'm on the phone or on the floor, she will find me, and get me on the phone with you. My direct line is (800) 636-6670, and my office extension is 5636.

See Audiotape # 1, File No. EB-02-TC-119. See also the transcript of this conversation between Ms. Janice Baynor of Tideland Electric Membership Corporation of Pantego, North Carolina and Ms. Gibbs of NOS/ANI ("Tideland Electric Transcript"), attached hereto as Appendix C. Ms. Gibbs gave the same Nevada telephone number, fax number, and toll-free number and extension where she could be reached to all the consumers, regardless of which entity she identified herself as associated.

Accordingly, in the absence of any evidence to the contrary, it appears that NOS, ANI, and NOSVA are alter egos of the same company, and therefore, will each be held jointly and severally liable for any apparent violations discussed herein.

⁵ See *CCN, Inc. et al.*, Order to Show Cause and Notice of Opportunity for Hearing, 12 FCC Rcd 8547 (1997)(CCN)

⁶ *Id.*

⁷ See Affidavit of Robert Faulkner ("Faulkner Affidavit"), File No. EB-02-TC-119, attached hereto as Appendix A. According to Mr. Faulkner, he was employed by NOS from October 1996 to April 2002. In his last position as Executive Director of Accounts Receivables and Collections, he was responsible for overseeing the collections from NOS/ANI customers. In December 2001, after NOS/ANI implemented their new "Winback" Campaign, Mr. Faulkner noticed a marked increase in customer complaints alleging that their service had been switched back to NOS/ANI without their authorization or that the Winback or Quality Assurance Department had exerted undue pressure on them to authorize such a switch. *Id.*

⁸ Mr. Faulkner provided the Bureau with six audiotapes of conversations between NOS/ANI sales representatives and consumers, which he states he recorded live from the Companies' computer telephone monitoring system, the NICE system, during the latter part of April 2002. Mr. Faulkner also provided the Bureau with a telemarketing script, titled "DM Presentation Winback 1", the names and telephone numbers of customers, and copies of e-mail correspondences between himself and other members of management regarding the consumer complaints described herein. See Faulkner Affidavit, Appendix A.

consumers who from the basis of this Order have signed declarations under penalty of perjury stating that NOS/ANI contacted them after they switched to new carriers and told them that their new carriers had not picked up all of their lines, and that as result, their lines were still billing with NOS/ANI.⁹ The consumers also state that they were threatened with service disruption if they did not sign new LOAs, which they were told were temporary, but necessary to keep their service running. Some of the consumers were induced into signing the LOAs with the assurance that it was only temporary, while others refused to sign.¹⁰

5. The Companies' Winback Campaign apparently began in December 2001." **As** alleged by the consumers, and reflected in the audiotapes, the conversations between consumers and NOS/ANI representatives followed a similar script, during which NOS/ANI apparently made numerous false representations to the consumers to induce them to switch their services back to NOS/ANI.¹² **As** an initial matter, consumers were told that they were being contacted by the Companies' Cancel or Operations Cancel Department because the Companies had received an alert in their system from the local carrier to switch the consumers' services. In fact, NOS/ANI representatives were apparently calling from the Winback Department." Moreover, the consumers were apparently targeted for these calls because they appeared on a lost account report received from MCI, and not because of any "alert" from the consumers' local service provider.¹⁴

6. NOS/ANI representatives also represented to these consumers that their lines were still billing with the Companies because their new carrier had not yet switched over the services.¹⁵ Indeed, consumers were sometimes told that their new preferred carriers had not yet

⁹ See Appendix F.

¹⁰ For the consumers who were induced into signing the LOAs, based on apparent misrepresentations, NOS/ANI apparently used or attempted to use the LOAs as authority to switch the consumers back to the Companies' services.

¹¹ See Faulkner Affidavit, Appendix A.

¹² In fact, as explained *infra* at paragraph 11, NOS/ANI had a "Winback Script" that appears to have set the general and specific parameters for these discussions.

¹³ Apparently NOS/ANI believed consumers would not be deceived into believing that their lines were in imminent danger of disconnection if they realized the caller was from a sales department. See Faulkner Affidavit, Appendix A.

¹⁴ Apparently disconnect orders are not sent by local exchange carriers to interexchange carriers ("IXCs"), such as NOS/ANI prior to the completion of a switch. Once a switch has been completed, IXCs receive reports showing lost or gained accounts. These reports reflect only completed switches either to or from the IXC. See letter from Cecilia B. Lewis of Worldcom, dated March 3, 2003 ("March 3, 2003 Worldcom Letter"), File No. EB-02-TC-119.

¹⁵ For example, in the case of Nelson Engineering Construction, Inc. ("Nelson Engineering") of Sioux City, Nebraska, Ms. Gibbs of NOS/ANI informed the consumer that before NOS/ANI shut the consumer's lines down, she was calling to inform the consumer that the lines were still billing because the new carrier had not switched them over yet:

even requested their lines.“ It appears that NOS/ANI representatives informed the consumers that they were calling “out of courtesy” to see if the consumers wanted NOS/ANI to carry their lines “in the interim period” until their lines were switched to the consumers’ new preferred carriers.¹⁷ According to Companies’ representations, NOS/ANI would normally have cancelled the services of these accounts unless they were “red flagged” for having call traffic.’*

7. The new carriers were apparently already servicing the consumers, and the consumers were not incurring further charges from NOS/ANI at the time of the calls. IXCs such as NOS/ANI receive reports from local service providers that reflect only completed switches either to or from the IXC.¹⁹ Thus, NOS/ANI would only have knowledge of which customers requested preferred carrier changes after the switches had been completed.²⁰ Indeed, Mr. Faulkner confirmed that consumers were targeted for these calls because they appeared on a lost account report received from MCI.²¹

I wanted to call you myself – I **know** that he spoke to you several times – before we go proceeding to shut the lines down and let you know that the lines are still billing here with our company. The company that you have switched to has not switched your services over yet.

See Audiotape # 4, File No. EB-02-TC-I 19. **See also** the transcript of this conversation between Ms. Julie Suhr of Nelson Engineering and **Ms.** Gihhs of NOS/ANI (“Nelson Engineering Transcript”), attached hereto as Appendix D.

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ *Id.* To convince consumers that their lines had not already been switched to their new carriers, NOS/ANI representatives apparently represented that they were viewing the consumers’ call traffic live **or** within the past hour. For example, in the case of Tideland Electric, Ms. Gihhs stated that she “checked the [call] traffic within the last hour,” and that Tideland Electric’s lines were still billing. **See** Appendix C. She later told **Ms.** Baynor of Tideland Electric that she was actually looking at its call traffic and could tell that the new carrier had not picked up the lines. *Id.* Worldcom has confirmed, however, that NOS/ANI cannot view live call traffic and does not receive call traffic data information from MCI for at least a day after its occurrence. *See* March 3, 2003 Worldcom Letter, File No. EB-02-TC-119.

¹⁹ *See* Note 14, *supra*

²⁰ Nelson Engineering is a specific example of a consumer that was contacted by NOS/ANI after its lines had been switched. In that case Nelson Engineering’s local service provider, Qwest Communications, Inc. (“Qwest”), confirmed in writing that the consumer’s lines were switched from NOS/ANI on April 17, 2002. *See* email from Richard Denny of Qwest, dated March 6, 2003, File No. EB-02-TC-119. Nevertheless, during a conversation between Ms. Suhr of Nelson Engineering and Ms. Gihhs of NOS/ANI on April 23, 2002, **Ms.** Gibbs insisted that Nelson Engineering’s lines were “still sitting in here with us on the local end as well as long distance.” **Ms.** Gibbs further stated that “[w]hat is going to happen is it **is** going to cause a disruption to everything that you have, as well as the local phone, too, because they haven’t completed it. *See* Nelson Engineering Transcript, Appendix D.

²¹ *See* Faulkner Affidavit, Appendix A.

8. During the calls made in this marketing campaign, NOSiANI representatives also advised the consumers that they needed to execute new LOAs until the consumers' new carriers picked up their lines, to ensure continuity of service.²² Consumers were incorrectly informed that once they signed an LOA with another company to switch their services from NOS/ANI, even though their lines were still being billed by NOS/ANI, NOS/ANI did not "have authorization to carry the traffic anymore."²³ According to the Companies' representatives, a new LOA was mandated by the FCC "because of all the slamming that's going on."²⁴ NOS/ANI representatives apparently told consumers that once they signed the allegedly standard, FCC-approved LOA, with a notation to "*See* attached addendum," the consumers' service would continue,²⁵ and all ties with NOS/ANI would be severed as soon as the new carriers picked up their lines.²⁶ Consumers were also told that they had to sign the new LOA for all of their lines, and not just the ones allegedly still billing because NOSiANI could not service partial line accounts.²⁷

9. Apparently consumers were threatened that their lines would be taken down if NOSiANI did not receive immediate resolution of the matter.²⁸ NOS/ANI representatives apparently applied increasing and escalating pressure on their former customers to switch back to NOS/ANI. They apparently contacted their former customers repeatedly, refusing to take no for an answer and each time increasing the pressure and urgency to sign a new LOA designating NOSiANI as the supposed "interim" carrier. In the case of Tideland Electric, for example, when

²² See, for example, Nelson Engineering Transcript, Appendix D, and Tideland Electric Transcript, Appendix C.

²³ See Nelson Engineering Transcript, Appendix D

²⁴ *Id.*

²⁵ *Id.* Consumers were apparently told to include with the LOA an addendum statement on company letterhead that the LOAs were temporary. Consumers were told that NOS/ANI could not send them temporary or interim LOAs because allegedly the FCC had only approved one standard LOA for their use. *Id.*

²⁶ See Tideland Electric Transcript, Appendix C

²⁷ *Id.* Ms. Gibbs states, specifically

[Y]ou signed a Letter of Agency with this other company... Our company is not tariffed to do partial line billing... [W]e're carrying the traffic at a liability because we don't have permission to carry it at this point. For instance, when you signed that Letter of Agency with them it voided out any authorization that we had to carry this traffic

Id.

²⁸ *Id.* See also Nelson Engineering Transcript, Appendix D

Ms. Baynor on behalf of Tideland Electric, stated that she could not sign the new LOA without permission from the company CEO, who was unavailable, the NOSiANI representative insisted that she sign because NOS/ANI showed her as an authorized signer on the account.²⁹ Ms. Gibbs, the NOS/ANI representative, persisted” and followed up in a subsequent call with a lengthy and impassioned argument upon learning that the CEO had not yet been contacted.³¹

10. During the campaign, NOS/ANI also apparently threatened disruption to former customers’ local telephone service, even though those customers did not have local service with NOSiANI at the time, to induce them to sign LOAs designating NOS/ANI as their carrier. For example, Ms. Gibbs, on behalf of NOS/ANI, threatened disruption to Nelson Engineering’s local telephone service in a conversation that **took** place on April 23, 2002, representing to Nelson Engineering that its new preferred camer had not yet completed the **switch**.³² As she stated, “What is going to happen is it is going to cause a disruption to everything that you have, as well as the local phone, too, because they haven’t completed it.”³³ Yet, as of April 1, 2002, Nelson Engineering’s local service was with Qwest.³⁴ Therefore, NOS/ANI could not have disrupted Nelson Engineering’s local service at the time of this **call**.

²⁹ See Tideland Electric Transcript, Appendix C

³⁰ *Id.* Ms. Gibbs even went so far as to suggest she could contact the CEO directly through his cell phone or, failing that, if there was an “owner, or your attorney or somebody” who could sign. *Id.*

³¹ *Id.* Ms. Gibbs threatened that disconnection of the business’s 800 numbers could mean “serious detriment” to Tideland Electric as well as the permanent loss of its 800 numbers if they were placed back in the open market. She stated specifically:

See, that’s the thing, Janice, if ... if it’s shut off right now, then you ... he [the CEO] won’t even be able to call into you to see what’s going on because every phone line [clears throat] is still billing here with our company, you know. And you’re still here on everything. So, and, uh ... [unclear word] all those lines will be shut **off, as** well as all the other locations. Your 800 numbers are still billing here with us. And you know, basically, if... if the 800 numbers are shut down -- which is where the predominantly ... most of your business is at -- it’s gonna have clearly that these lines are disconnected. My concern is the fact that we don’t have them in here trying to pull them from us. **S**o they’re going to be sitting dormant. That’s the perfect opportunity for the National SMS to reissue them. . . . That is the perfect opportunity for another company to pick them up **on** an open market network, and you can possibly lose the numbers. So I’m just ... I’m not trying to scare you, I’m just trying to let you know, you know, as the Director of this department what can happen. Because if we don’t get something to cover this ... Because your company **is** gonna **be** at a serious detriment.

Id.

³² See Nelson Engineering Transcript, Appendix D

³⁴ See email from Richard Denny of Qwest, dated January 28, 2003

11. The apparent pattern of these conversations NOS/ANI had with former customers bears a remarkable similarity to a “Winback Script”³⁵ provided by Mr. Faulkner, who attested that the Companies originated the script in December 2001, with top management handing down the script to branch managers and sales representatives in the Winback/Quality Assurance Department.³⁶ For example, the Winback Script instructs sales representatives to identify themselves to the consumers as the consumers’ current long distance carrier, while acknowledging that the consumers had requested a change to another carrier.” The script then directs the sales representatives to tell the former customers that their lines are still being billed with NOS/ANI, and to ask them if they would like to avoid disruption in their service because now that “you’ve signed letter of agency with another company . . . and they didn’t pick up all your lines at once...this could cause a disruption to your service...”³⁸ Next, the representatives are instructed to explain that NOS/ANI is allegedly prohibited from providing service to “partial line accounts.”” The script then instructs the sales representatives to solve this “problem” by offering to keep “all your lines **up** and running” by having the customer sign an LOA.⁴⁰ Under the script, the LOA is described as providing temporary authority for NOS/ANI to keep their former customers’ service running “til the new carrier picks them up.”⁴¹

12. The Winback Script also instructs the sales representatives to implement a practice of “calling as customer,” or “CAC,” where necessary.⁴² Specifically, the Winback Script

³⁵ See telemarketing script, titled “DM Presentation Winback 1” (“Winback Script”), File No. EB-02-TC-119, a reproduction of which is attached hereto as Appendix B.

³⁶ See Faulkner Affidavit, Appendix 4

³⁷ See Winback Script, Appendix B

³⁸ *Id.* Similar to the case of Nelson Engineering, discussed previously, and other consumer allegations, the script also instructs the representative that **he must** inform the consumer that his local service was also **at** risk. The script appears to make no distinction between consumers who had local service with NOS/ANI at the time and those who did not. Specifically, the script states:

[MUST SAY]

This will allow us to keep all your lines up and running, including your [sic] local service . . . Just until they can properly switch them.

Id.

³⁹ *Id.*

⁴⁰ *Id.*

⁴¹ *Id.*

⁴² *Id.*

directs sales representatives to ask for the consumer's consent to call his or her local phone company, using the consumer's name." According to the script, the sales representative should explain that a conference call with the consumer's local phone company is necessary to make sure that everything is done correctly, but that the sales representative does not want to "bug" the consumer anymore.⁴⁴ According to Mr. Faulkner, CAC is necessary when an LOA does not suffice to change a consumer's preferred carrier with the local phone company, such as when there is a preferred carrier freeze or another restriction."

13. The case of Arizconsin Group, Inc., d/b/a Crandon Nursing Home ("Crandon Nursing") of Crandon, Wisconsin appears to illustrate the Companies' practice of "calling as customer" to effect a change to a consumer's preferred carrier selection. On April 11, 2002, Crandon Nursing switched its main line and associated telephone numbers from NOS/ANI to Verizon.⁴⁶ Ms. Christina Rose Spencer of Crandon Nursing was apparently contacted thereafter by NOS/ANI and, under threat of service disruption, signed a new LOA and faxed it back to NOS/ANI.⁴⁷ Apparently, NOS/ANI submitted the LOA to the consumer's local carrier to switch Crandon Nursing back to NOS/ANI.⁴⁸ The consumer's local carrier, Frontier, apparently rejected the LOA because the consumer's service had just been changed from NOS/ANI.⁴⁹ Frontier alleges that, thereafter, it received two different telephone calls from people claiming to be Ms. Spencer and requesting that the consumer be switched back to NOS/ANI.⁵⁰ The first caller was a

⁴³ *Id.*

⁴⁴ *Id.*

⁴⁵ See Faulkner Affidavit, Appendix A

⁴⁶ See letter from Citizens Communications Company, d/b/a Frontier ("Frontier Letter"), File No. EB-02-TC-119.

⁴⁷ See Declaration of Christina Rose Spencer, Administrative Assistant, Arizconsin Group, Inc., d/b/a Crandon Nursing Home, File No. EB-02-TC-119.

⁴⁸ See Frontier Letter, File No. EB-02-TC-119. In the Frontier letter, as well as with other local exchange carrier ("LEC") responses that the Bureau received regarding preferred carrier changes submitted by NOS/ANI, the responsible carrier is shown as MCI or Worldcom ("MCI/Worldcom"). This occurs because switchless resellers of long distance, such as NOS/ANI, typically submit preferred carrier changes to the subscriber's LEC using the carrier identification code assigned to the underlying carrier. Therefore, the LEC records will show the change was made by the underlying carrier and not the switchless reseller. In this case, NOS/ANI is a switchless reseller of MCI/Worldcom long distance. Accordingly, for ease and simplicity in this Order, even when LEC responses refer to MCI/Worldcom, we will only refer to NOS/ANI when it is the responsible carrier. With regard to Crandon Nursing, specifically, the Bureau has received written confirmation from Worldcom that NOS/ANI was its reseller involved in the requested preferred carrier change described herein. See January 24, 2003 Worldcom letter, File EB-02-TC-119.

⁴⁹ See Frontier Letter, File No. EB-02-TC-119

⁵⁰ *Id.*

male, but knowing that Chris Spencer was a woman, Frontier's Customer Care representative refused to make the requested change without first contacting the consumer, who later confirmed that she did not authorize the change." The second caller was a female, who hung up when its representative told her the consumer would be called to verify the requested change.⁵² Ms. Spencer confirmed that she did not authorize the change after this second call as well.⁵³ In fact, on April 15, 2002, Ms. Spencer went to Frontier's office and signed a preferred carrier freeze to prevent further unauthorized changes from being executed.⁵⁴

14. Consumers who were apparently deceived into signing were usually returned to the Companies' services just days after they switched to their new carriers.⁵⁵ Once they learned that they had been switched back to NOS/ANI, however, they immediately switched away again, evidencing their clear intent to leave the Companies."

III. DISCUSSION

A. Whether NOS/ANI Violated Section 201(b) of the Communications Act

15. The consumer complaints and information from a former company executive before us all suggest a continuous telemarketing campaign, apparently intended for the sole purpose of tricking and threatening former customers into signing new LOAs to switch their services back to NOS/ANI. This practice depicts a callous disregard for the requirements of the Communications Act and section 201(b) in particular. Section 201(b) of the Act, states, in pertinent part, that "[a]ll charges, practices, classifications, and regulations for and in connection with such communication service, shall be just and reasonable, and any such charge, practice, classification, or regulation that is unjust or unreasonable is hereby declared to be unlawful."⁵⁷

⁵¹ *Id*

⁵² *Id*

⁵³ *Id*

⁵⁴ *Id*

⁵⁵ For example, in the case of EarthAction Alerts Network ("EarthAction") of Amherst, Massachusetts, the consumer switched its services from NOS/ANI on June 6, 2002 to Global Crossing and was switched back to NOS/ANI on June 11, 2002. See letter from Verizon, dated December 9, 2002 ("Verizon letter"), File No. EB-02-K-119. Also, in the case of Genisys Financial, d/b/a Magellan Mortgage ("Magellan Mortgage") of Costa Mesa, California, the consumer switched its services from NOS/ANI on April 14, 2002 to Unidial and was switched back to NOS/ANI on April 17, 2002. See letter from SBC Telecommunications, Inc., dated January 15, 2003 ("SBC letter"). File No. EB-02-TC-119.

⁵⁶ In the case of EarthAction, the consumer switched its services away from NOS/ANI again 14 days later on June 25, 2002. See Verizon letter, File No. EB-02-TC-119. In the case of Magellan Mortgage, the consumer switched its services away from NOS/ANI again 22 days later on May 9, 2002. See SBC letter, File No. EB-02-TC-110.

⁵⁷ 17 U.S.C. § 201(b)

Eased upon our review of the evidence before us, we find that NOS/ANI's apparent telemarketing campaign evidences apparently willful or repeated violations of section 201(b) of the Act. The Companies' apparent Winback Campaign involving misleading representations to consumers regarding the switch status of their services and threats of service disruption to scare consumers into signing LOAs appears to constitute an "unjust and unreasonable practice" within the meaning of section 201(b).

16. The evidence of NOS/ANI's apparent misrepresentations to consumers includes: 1) that the representatives were calling from NOS/ANI's Cancel Department or Operations Cancel; 2) that the consumer's lines were still billing with NOS/ANI because the consumer's new preferred carrier had not picked up all of their lines; 3) that NOS/ANI had received an alert in their system from the consumer's local service provider to disconnect the consumer's service, and that the alert probably just came too soon before the consumer's new preferred carrier could pick up all the lines; 4) that the consumer's account had been "red flagged" because it was still billing, and that the representative was calling out of courtesy to find out whether the consumer wanted to keep his or her lines up; 5) that when the consumer signed an LOA to switch from NOS/ANI to a new carrier, NOS/ANI lost authorization to carry the lines, and that, due to FCC mandates, NOS/ANI could not carry the lines without a new signed LOA; 6) that the consumer's lines would be taken down without a new signed LOA; 7) that the consumer had to sign the new LOA for all of his or her lines, not just the ones still billing because NOS/ANI could not service partial line accounts; 8) that the new LOA was temporary until the consumer's new carrier could "pick up" his or her lines, and that the consumer should attach an addendum to the LOA indicating that the LOA was temporary because the FCC had only approved a standard LOA; and 9) that the consumer needed to respond immediately or the consumer's lines would be taken down. The evidence also reveals that NOS/ANI's representatives apparently misrepresented to consumers that NOS/ANI could view the consumer's call traffic live or within the hour and that they could disconnect the consumer's local lines even when the consumer did not have local service with NOS/ANI.

17. As outlined herein, each of these representations is apparently false. Contrary to what was told to consumers, the NOS/ANI representatives were apparently calling from the Companies' Winback or Quality Assurance Department, and not the Cancel or Operations Cancel Department. This fact is supported by Mr. Faulkner's allegations and also by the audiotaped conversations and consumer allegations, which follow the telemarketing script from NOS/ANI's Winback Department. Therefore, it appears that the nature of the calls was to "winback" the consumers' service, and not courtesy calls to help the consumers keep their lines up while they transitioned to their new carriers as purported. It also appears that, contrary to assertions made by NOS/ANI representatives, the consumers' lines were already switched to new preferred carriers and were not incurring further charges from NOS/ANI at the time of the calls to consumers. If the consumers' lines had already been switched, it follows that NOS/ANI could not "take down" their lines for any services not remaining with NOS/ANI.

18. We have already established that NOS/ANI was apparently misrepresenting to consumers who had switched from their service that some of the consumers' lines had not been

picked up by their new carriers and that the companies could not carry the lines without authorization. There is nothing in the Act or in our rules which supports NOS/ANI's statements to consumers that NOS/ANI would lose authority to carry a consumer's lines once the consumer signs a new LOA with another carrier. In fact, this interpretation of our rules would provide absurd results, as it often is the case that a preferred carrier change is not executed until days after the consumer has requested the change and the request has been submitted to the local carrier and executed. Under NOS/ANI's theory, every carrier would be providing service without authorization if it did not immediately obtain "transitional" or "temporary" LOAs from consumers switching from their service to another carrier the moment those consumers requested the change or signed new LOAs with the other carriers. Further, administration in such an event would be nearly impossible, as most consumers do not even contact the old carrier when requesting a change to a different carrier. They simply give authorization to the new carrier. Given that carriers are only notified of lost accounts from the local carriers after the switches have been complete, the old carriers would have no way of knowing from whom to request these temporary LOAs.

19. It necessarily follows, therefore, that an old carrier loses authorization when the carrier change has been completed, and not when the consumer signs a new LOA or otherwise requests a carrier change. That said, NOS/ANI's statements to consumers that new LOAs are needed because consumers' new carriers did not pick up all of their lines are apparently false and misleading and not based upon any reasonable interpretation of the Act or our rules. In the unlikely event that a new carrier does not pick up all of a consumer's lines, NOS/ANI would continue to be the authorized carrier until the lines were switched over notwithstanding the companies' dubious policy against partial accounts.

20. NOS/ANI's Winback telemarketing campaign also apparently consisted of calling former customers and threatening them with service disruption if they did not sign new LOAs, promising that the LOAs would be temporary until the consumers' new carriers picked up their lines. Consumers were told to mark, "see attached addendum" on the LOAs and told to include with the LOA a statement on company letterhead that the LOAs were temporary. Consumers were apparently told that NOS/ANI could not provide them with temporary or interim LOAs because the FCC had allegedly only approved one standard LOA for their use. Consumers were apparently assured, however, that if they followed these instructions, as soon as their new carrier picked up their lines, all ties would be severed with NOS/ANI. Consumers were apparently called repeatedly with escalating threats to sign the LOAs. Pressured repeatedly and threatened with business losses, many of these business consumers apparently signed and returned the LOAs to NOS/ANI believing it was necessary to keep their lines up while they transitioned to their new carriers.

21. In many instances, NOS/ANI then used the LOAs to switch the customers back to NOS/ANI's service, oftentimes just days after they had switched to their new carriers. The consumers contend, however, that they did not intend to give the Companies authority to switch their preferred carriers back to NOS/ANI. In fact, the consumers were attempting to switch from the Companies to new carriers and were only willing to stay on NOS/ANI's services until their lines could be switched to their new preferred carriers. As the evidence establishes, the consumers were unaware that they had already been switched to their new preferred carriers and

that they did not need “temporary” service from NOSIANJ. The complainants make it clear that had they had this information, they would not have signed the LOAs.

22. In light of the apparent egregious behavior evidenced by the consumer statements, the audiotapes, the independent verification of the facts by the consumers’ local carriers, and other evidence, we direct the Administrative Law Judge (“ALJ”) to determine whether NOS/ANI engaged in a misleading and continuous telemarketing campaign in apparent willful and repeated violation of section 201(b) of the Act’s prohibition against unjust and unreasonable practices.

B. Whether NOS/ANI Should Remain Authorized to Act as a Common Carrier

23. It appears that NOS/ANI engaged in an unjust and unreasonable marketing practice in apparent violation of the Act. It thus appears that the continued operation of NOS/ANI as a common carrier may not serve the public convenience and necessity within the meaning of section 214 of the Act. We therefore direct the ALJ to determine whether the NOS/ANI blanket section 214 authorization should be revoked. Further, in light of the egregious nature of NOS/ANI’s apparently unlawful activities, we direct the ALJ to determine whether specific Commission authorization should be required for NOS/ANI, or the principal or principals of NOSIANI, to provide any interstate common carrier services in the future.⁵⁸

IV. CONCLUSION

24. In light of the totality of the information now before us, an evidentiary hearing is warranted to determine whether the continued operation of NOS/ANI as a common carrier would serve the public convenience and necessity within the meaning of section 214 of the Act. Further, due to the egregious nature of NOS/ANI’s apparently unlawful activities, NOS/ANI will be required to show cause why an order to cease and desist from the provision of any interstate common carrier services without the prior consent of the Commission should not be issued. In addition, consistent with our practice in revocation proceedings, the hearing will also address whether a forfeiture should be levied against NOS/ANI for willful and repeated violation of section 201(b) of the Act.

V. ORDERING CLAUSES

25. ACCORDINGLY, IT IS ORDERED that, pursuant to sections 4(i) and 214 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i) and 214, the principal or principals of NOS Communications, Inc., Affinity Network Incorporated, and NOSVA Limited Partnership ARE DIRECTED TO SHOW CAUSE why the operating authority bestowed on NOS Communications, Inc., Affinity Network Incorporated, and NOSVA Limited Partnership pursuant to Section 214 of the Communications Act of 1934, as amended, should not be REVOKED.

26. IT IS FURTHER ORDERED that, pursuant to section 312(b) of the Communications Act of 1934, as amended, 47 U.S.C. § 312(b), the principal or principals of

⁵⁸

See CCN 12 FCC Rcd 8547.

NOS Communications, Inc., Affinity Network Incorporated, and NOSVA Limited Partnership ARE DIRECTED TO SHOW CAUSE why an order directing them TO CEASE AND DESIST FROM THE PROVISION OF ANY INTERSTATE COMMON CARRIER SERVICES without the prior consent of the Commission should not be issued.

27. IT IS FURTHER ORDERED that the hearing shall be held at a time and location to be specified by the Chief Administrative Law Judge in a subsequent order. The ALJ shall apply the conclusions of law set forth in this Order to the findings that he makes in that hearing, upon the following issues:

- (a) to determine whether NOS Communications, Inc., Affinity Network Incorporated, and NOSVA Limited Partnership engaged in a misleading and continuous telemarketing campaign in apparent willful and repeated violation of section 201(b) of the Act's prohibition against unjust and unreasonable practices;
- (b) to determine, in light of all the foregoing, whether NOS Communications, Inc., Affinity Network Incorporated, and NOSVA Limited Partnership authorization pursuant to section 214 of the Act to operate as common carriers should be revoked;
- (c) to determine whether, in light of all the foregoing, NOS Communications, Inc., Affinity Network Incorporated, and NOSVA Limited Partnership and/or their principals should be ordered to cease and desist from the provision of any interstate common carrier services without the prior consent of the Commission;

28. IT IS FURTHER ORDERED that the Chief Enforcement Bureau, shall be a party to the designated hearing. Both the burden of proceeding and the burden of proof shall be upon the Enforcement Bureau as to issues (a) through (c) inclusive.

29. IT IS FURTHER ORDERED that, to avail themselves of the opportunity to be heard, the principal or principals of NOS Communications, Inc., Affinity Network Incorporated, and NOSVA Limited Partnership, pursuant to section 1.91(c) of the Commission's rules, SHALL FILE with the Commission within 30 days of the mailing of this Order to Show Cause and Notice of Opportunity for Hearing a WRITTEN APPEARANCE stating that a principal or other legal representative from NOS Communications, Inc., Affinity Network Incorporated, and NOSVA Limited Partnership will appear at the hearing and present evidence on the matters specified in the Show Cause Order. If NOS Communications, Inc., Affinity Network Incorporated, and NOSVA Limited Partnership fail to file a written appearance within the time specified, NOS Communications, Inc., Affinity Network Incorporated, and NOSVA Limited Partnership's right to a hearing SHALL BE DEEMED TO BE WAIVED. In the event that the right to a hearing is waived, the Presiding Judge, or the Chief, Administrative Law Judge if no Presiding Judge has been designated, SHALL TERMINATE the hearing proceeding as to that entity and CERTIFY this case to the Commission in the regular course of business, and an appropriate order shall be entered.

30. IT IS FURTHER ORDERED that, if it is determined that NOS Communications, Inc., Affinity Network Incorporated, and NOSVA Limited Partnership have willfully or repeatedly violated any provision of the Act or the Commission's rules cited in this Order to Show Cause and Notice of Opportunity for Hearing, it shall be further determined whether an Order for Forfeiture shall be issued pursuant to Section 503(b) of the Communications Act of 1934, as amended,⁵⁹ for the maximum forfeiture amount of \$120,000 per day for more than ten (10) days up to the statutory maximum of \$1,200,000.

31. IT IS FURTHER ORDERED that NOS Communications, Inc., Affinity Network Incorporated, and NOSVA Limited Partnership must immediately modify their document retention policies, if necessary, to ensure that no arguably relevant Documents, as defined herein,⁶⁰ are destroyed. This obligation includes any Documents relating to the matters described above. NOS Communications, Inc., Affinity Network Incorporated, and NOSVA Limited Partnership must retain all such Documents and continue the modified document retention policies for twenty-four (24) months from the date of this Order unless (1) NOS Communications, Inc., Affinity Network Incorporated, and NOSVA Limited Partnership are directed by the Enforcement Bureau to retain such Documents and continue the modified document retention policies until the matter has been finally concluded through issuance of a final order in this proceeding and exhaustion of all possible appeals.

32. IT IS FURTHER ORDERED that this document constitutes a NOTICE OF OPPORTUNITY FOR HEARING pursuant to section 503(b)(3)(A) of the Communications Act of 1934, as amended, 47 U.S.C. § 503(b)(A), for the potential forfeiture liability outlined above.

33. IT IS FURTHER ORDERED that a copy of this ORDER TO SHOW CAUSE AND NOTICE OF OPPORTUNITY FOR HEARING shall be sent by certified mail, return receipt requested, to NOS Communications, Inc., Affinity Network Incorporated, and NOSVA Limited Partnership at:

NOS Communications, Inc.
6110 Executive Boulevard, Ste. 508
Rockville, MD 20852

⁵⁹ 47 U.S.C. § 503(b).

⁶⁰ "Document" shall mean the complete original (or in lieu thereof, exact copies of the original) and any non-identical copy (whether different from the original because of notations on the copy or otherwise), regardless of origin or location, of any written, typed, printed, transcribed, taped, recorded, filmed, punched, computer-stored, or graphic matter of every type and description, however and by whomever prepared, produced, disseminated, or made, including but not limited to any advertisement, book, pamphlet, periodical, contract, correspondence, facsimile, e-mail, file, invoice, memorandum, note, telegram, report, record, handwritten note, working paper, routing slip, chart, graph, photograph, paper, index, map, tabulation, manual, guide, outline, script, abstract, history, calendar, diary, agenda, minute, marketing plan, research paper, preliminary drafts, or versions of all of the above, and computer material (print-outs, cards, magnetic or electronic tapes, disks and such codes or instructions as will transform such computer materials into easily understandable form).

Affinity Network, Inc.
4380 Boulder Highway
Las Vegas, NV 89121

NOSVA Limited Partnership
6701 Democracy Boulevard, Ste. 811
Bethesda, MD 20817

FEDERAL COMMUNICATIONS COMMISSION

Marlene Dortch
Marlene Dortch *w7c*
Secretary

APPENDIX A**AFFIDAVIT OF ROBERT FAULKNER**

- 1 My name is Robert Faulkner, and my address is [REDACTED]
[REDACTED]. My telephone number is [REDACTED]
[REDACTED]. I am over eighteen (18) years old.
- 2 From October 1996 to April 2002, I worked for NOS Communications, Inc. ("NOS") at 4380 Boulder Highway in Las Vegas, NV 89121. I was last employed by NOS as the Executive Director of Accounts Receivables and Collections. In that position, I oversaw all the collection activities for NOS and its subsidiaries and affiliates. NOS, its subsidiaries and affiliates, including Affinity Network Incorporated and NOSVA Limited Partnership, operated from shared facilities at the same Las Vegas address. NOS's customers were primarily business customers.
- 3 In December 2001, when my department contacted customers regarding collections, we noticed that many customers were complaining that their services had been switched back to NOS without their authorization or that NOS had exerted undue pressure on them to authorize such a switch. The complaints were primarily against NOS's Quality Assurance ("Winback") Department.
4. I began investigating these customer complaints through use of NOS's telephone monitoring system called NICE. The NICE computer system allows access to live or previously recorded (archived) telephone calls throughout the company. Through NICE, recorded conversations can be sent electronically via wav files. At the time of my employment, Bill Fleischman was in charge of the NICE system and Nate Brown was the Vice President of Information Systems.
5. As an authorized user of the NICE system, I listened to calls from the Winback Department and heard sales representatives and branch managers misrepresent to customers who had switched from NOS that NOS was still showing call traffic from the customers' line(s) due to an incomplete preferred carrier change. Customers were even told that NOS was showing up to the minute calls, which was impossible to view.
6. The Winback Department's sales representatives and branch managers also told customers that they were calling from the Cancel or Operations Cancel Department, and that they had received an "alert" or disconnect order to disconnect the customer's line(s) still showing traffic. [The so-called "alerts" were lost traffic reports from WorldCom, Inc., from whom NOS resells long distance, showing that a customer had switched 50% or more of its lines. An appearance on this report would bring the customer to the attention of the Winback Department].

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7. The customers were asked if they wanted their service "taken down" or "left up" while they were being switched to their new carriers. Confused, the customers often wanted to contact their new carriers, but were told that a resolution was required on that particular call or the line(s) involved would be disconnected.
 8. The customers were told that NOS was carrying the lines at a risk of being fined \$10,000 to \$40,000 by the FCC for slamming. The customers were asked to sign a Letter of Agency (LOA) to prevent service disruption, under the misinformation that the LOAs kept NOS from being in violation of the FCC's slamming rules. Customers, in fear of losing their lines (especially their toll-free numbers), reluctantly agreed to sign the LOAs. They signed under the belief that it was a temporary arrangement until their new carriers completed the switch.
 9. Customers were told that they had to sign the LOAs for all of their lines. not just the one(s) showing traffic, because NOS could not service partial line accounts. This was a ploy to move all of the customer's lines back to NOS.
 10. During these calls, sales representatives and branch managers would oftentimes practice what they refer to as "calling as customer" ("CAC"). CAC is calling the customer's local exchange carrier ("LEC") and pretending to be the customer to complete the carrier change. Customers were told that the sales representative or branch manager could complete a conference call to the LEC using the customer's name to save the customer time. They misrepresented to customers that these calls could take from 20 to 40 minutes, and that they did not want to keep the customer on the line any longer. Sometimes the sales representatives or branch managers did what is referred to as a "push through", that is, they would switch the customer's service without a conference call if the customer had no "PIC freeze" restrictions on his line(s). CAC is only necessary when an LOA does not suffice to switch a customer's service, such as when there is a "PIC freeze."
 11. I have forwarded to the FCC audiotapes of some of the aforementioned calls to customers. The audiotapes are of calls made primarily by Tim Slingerland, branch manager, and Marsha Gibbs, sales representative, during the latter part of April 2002. The audiotapes were recorded live from the NICE system, and I have marked certain of the tapes with the dates they were recorded. The audiotapes corroborate the misleading practices I have described herein.
 12. I have also forwarded to the FCC a copy of the Winback Department's customer calling script. As with the audiotapes, the script further corroborates the misleading practices of NOS's sales representatives and branch managers as I have described herein. The script was originated at the start of the "winback campaign" in December 2001. It has been revised several times since, most recently in March or April 2002. The scripts were handed down from top managers to branch managers and sales representatives, who have been allowed to "think on their feet" and embellish.

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13. Additionally, I have forwarded to the FCC copies of various NOS emails, memos, customer complaints, customer lists and telephone numbers, reports (Winback Tracking, Settlement Tracking, and Logout), and billing records.

I declare under penalty of perjury that the foregoing is true and correct.

/s/ Robert Faulkner for ROBERT FAULKNER
Signature Business Name

Executed on (Date): 3/5/03

APPENDIX B WINBACK SCRIPT

DM PRESENTATION WINBACK 1

Hi (DM NAME) .. this is _____ with _____ your current long distance carrier.... How's yer day doing so far....Good?....I noticed where someone put in a request to move your phone lincs to another service....and I just want to apologize because we obviously let you down...and I also want to say thank you for the business you've given us....

And if things don't work out with yer new carrier...I'd really appreciate it if you'd give us another chance. Your lines are still billing on our service And I imagine you want them left up and running till the new carrier picks them **up**....right'?

IF YES KEEP GOING...

Now what I'm going to do *is* send you \$500 in pre paid calling in case you do have any problems. Because the last thing we want you to do is to leave with a bad taste in your mouth.

I'm also gonna send you another Letter *of* Agency.

[MUST SAY]

This will allow us to keep all your lines up and running, including yer local service (DM NAME)...Just until they can properly switch them.

IF ANY REUTTAL GO HERE

IF NO REBUTTAL GO TO CLOSE

Now because you've signed letter of agency with another company....and they didn't pick **up** all your lines at once....this could cause a disruption to your service...so I'm calling to confirm that you still want ALL your lincs left up and running for now.

IF ASKED WHY WOULD IT CAUSE A DISRUPTION

Unfortunately (DM NAME) ..our tariff does not allow us to service partial line accounts....and our system is set up to take down accounts that have partial lines still hilling...so I'm calling to confirm that you want these lines left up and running for now.

JUSTIFICATION FOR POLICY

The cost for our company to service...and bill and collect...on a partial line account...that may only *generate* \$25-\$50 in billing... is almost as high as the cost *to* service an entire account...where all the lines are billing on our service...that may bill \$250-\$500. **So the bottom line is ...it's just not profitable for us to service partial line accounts.**

CLOSE AND C A C

If you could grab my fax I will only take a couple more seconds of your time ...and we should be able to pick all your lines without having to bother you anymore. In order to make sure this is done correctly....we may have to conference you io with the local phone

companywhich usually takes about 20 minutes...or ...if it's ok to just use your name...we take care of it ourselves...this **way** we don't have to **bug** ya anymore is that O.k. (MUST WAIT FOR RESPONSE). **Now** the fax should be there all I need you to do is just sign and date it and fax it back at (COMPANY FAX) ...that way we'll **be** coveredand you'll still have service...

HOLD FOR L.O.A

(AFTER LOA IS RECEIVED)

Let me **ask** you...just out of curiosity....why ya leaving?
{AddressThe Issue}

IF RATE IS ISSUE THEN-----

Oh...I'm sorry...I'll tell you what.....I'm gonna give ya a nice reduction on your rate...this way you don't have to worry about switching again.

***Reduce Rate only to whatever the rate **was** before the last rate increase.

Question: Can you just leave my lines up for a couple of days?

Answer: We can leave them until tomorrow, **if** that will help you

APPENDIX C**TIDELAND ELECTRIC TRANSCRIPT****Audiotape # 1, Side B**

[First conversation with Marsha Gibbs of NOS/ANI]

Janice: Good afternoon, Janice Baynor

Marsha: Yes, hi, Janice. My name is Marsha Gibbs. I'm calling from ANI Communications in the Corporate Office. How are you?

Janice: I am fine

Marsha: Alright, you know that calls are monitored and recorded for quality assurance purposes. I and Timothy, or someone ... You talked to him. He's a manager. He's a branch manager. He runs our Operations Department.

Janice: Uh-uh

Marsha: I'm the Director. And so, I wanted to call you on myself because I wanted to speak to you about some issues. The lines are still billing here with our company. And so you're going to Sprint from what I understand. Is that correct?

Janice: Yeah, that's right.

Marsha: They have not completed the switch. The lines are still billing here with our company. I did not wanna have to shut these lines off because your business would be in a detriment, and basically, anybody that calls into the office will have that you are temporarily disconnected. And if you tried to dial out on the lines that are still PIC'd here, you wouldn't be able to.

Janice: Right

Marsha: And you have so many lines, you know, that are billing here, you know, on a large scale. If we can send you a Letter of Agency, have you attach a detailed addendum to it. Put on the form itself, "See attached addendum." Cause I would much rather prefer, as a previous customer of ours, for you to transition from our company over to the other one.

Sanic: Yeah

Marsha: And what I will do is, basically -- and I don't usually make these types of calls, but I wanna give you my backline because, uh, we're gonna work through this process to make sure that everything transitions over correctly to them.

Janice: Okay, sure

Marsha: Okay, and so my line directly ... I'm gonna get two numbers for you, actually. Hold on for two seconds, okay?

Janice: Okay

[PHONE RINGS]

Marsha: Okay, Janice. I'm gonna give you. uh ... This is ... This is the line that you call, but at least you will have a way -- two ways -- of getting a hold of me directly. It's 702 ...

Janice: Where are you located?

Marsha: I'm in Nevada. Nevada, originally from Chicago. Our ... our Corporate Office was in Bethesda, but I -- we -- transferred here.

Janice: 702

Marsha: 949-4019, and uh, my secretary's name is Megan. And so, if I'm on the phone or on the floor, she will find me, and get me on the phone with you. My direct, uh, ... my direct line is (800) 636-6670. And my office extension is 5556. And Megan is within the office, but I just wanted you to have two numbers.

Janice: What is your name?

Marsha: Marsha Gibbs. G. I. B. B. S. It's spelled M. A. R. S. H. A

Marsha: And so I'm gonna send the form over, and I need to. uh, have resolution on this call because what I want you to do is ... I'm gonna tell you what to write out on the Addendum. You need to state the company that you're switching to so that it's on this call. And then on the form itself we're gonna have you put clearly, "See attached addendum." Because those are the terms of this Letter of Authorization that you're signing. And then as soon as it comes in it might erase your services from us. All your ties will be severed from our company completely. And we're gonna make sure that this transitions because, you know, this is the thing. You don't wanna go shutting people's lines down. Even though, in this particular instance, it's not our fault because they didn't pick it up in time. And no fault to them, it's probably because we got our alert a little bit too early before they could finish it. But the last thing you wanna do is do that because this

is, uh, very competitive. You're not with us right now, but maybe you might consider our company in the future.

Janice: Right.

Marsha: And so, what's the fax number that's closest to you so, uh, right now? I can get this form over to you.

Janice: 252.

Marsha: 252.

Janice: 943

Marsha: 943.

Janice: 3510.

Marsha: 3510.

Marsha: Okay, I'm gonna modify it and get it over to you right now. If you can put me on hold and grab the company letter head, I'll tell you exactly what to put. This is going to take two minutes, and we're done.

Janice: Well, I'm gonna have to go ... The CEO is not here this afternoon, and I'm ... He ... We go over all changes like this before we finalize them with him. He ... I'm expecting him back later on ... [words unclear].

Marsha: Has Tim ... Has Tim or any body talked to him? Is this

Sanice: I don't think so. I don't know.

Marsha: Is this, um ... I'm trying to think. If ... If I

Janice: If they did call ... [words unclear]

Marsha: Is it Jeff?

Janice: No

Marsha: Okay, I have Patrick. Was it him?

Janice: Uh, no, Patrick is an accountant

Marsha: Okay, cause I know that they talked to several people here

Janice: Yea, they talked ... they talked to, uh, Patrick. He's the accountant that handles the bills.

Marsha: Yea, we do have you listed as the key person here.

Janice: That's right

Marsha: And ... And it says temporarily. My main concern is we don't want you to lose service. At this point ... [words unclear].

Janice: I certainly don't want to either

Marsha: Yeah, we haven't gotten resolution on it, and that's why I called you myself because I don't want you to mistake urgency for pressure. But this system is set up to cause disruption to everything effective immediately. And so I wanted to call and explain it to you, so that we can get this on file. Because, as you know, in our company, we don't have contracts, term plans, or agreements. So as soon as they come in and pick it **up**, it will be fine. But if the service goes down, it's gonna take them even longer, Janice, to get it PIC'd to them because they are gonna have to figure how to bring it back up. And this is every phone line that is associated here with us that's still billing, which is at this point about 95% of the traffic.

Janice: Okay

Marsha: So, I need to get that back from you

Janice: If... If you'll get it to me, then I'll ... I'll ...

Marsha: It's sitting. It's sitting there right now. And I have to confirm with you on this recorded line that I received it from you. That's the reason why I gave you both of my numbers. Because once you talk to him, if they have any questions for me, that's fine. Our main point is ... is we're respecting your decision. We actually want that company to come in as soon as they can and pick it **up**. Because it's almost not worth carrying it if you ... if our company is gonna be at a liability. And I don't mean to sound facetious when I say that at all because we appreciated you as customer, but we want to help them get you over there as soon as possible without ... with you having a smooth transition.

Janice: Uh well, as soon as I can talk with him ... And I don't know what time he will be here. That's the thing.

Marsha: Is there any way you can go ahead and send that over to me?

Janice: I cannot.

Marsha: So I can keep this up and running?

Janice: I cannot. I have to have a talk with him

Marsha: Well, does he have a cell phone where you can put me on hold and let him know the seriousness of this situation?

Janice: Well, he's actually ... He's actually on the golf course ... [word unclear]. He does not carry a phone with him.

Marsha: Okay

Janice: But I expect him in later on this afternoon.

Marsha: See, that's the thing, Janice, if ... if it's shut off right now, then you ... he won't even be able to call into you to see what's going on because every phone line [clears throat] is still billing here with our company, you know. And you're still here on everything. So, and, uh ... [unclear word] all those lines will be shut off, as well as all the other locations. Your 800 numbers are still billing here with us. And you know, basically, if ... if the 800 numbers are shut down -- which is where the predominantly ... most of your business is at -- it's gonna have clearly that these lines are disconnected. My concern is the fact that we don't have them in here trying to pull them from us. So they're going to be sitting dormant. That's the perfect opportunity for the National SMS to reissue them.

Janice: Say that again. I didn't hear you

Marsha: That is the perfect opportunity for another company to pick them up on an open market network, and you can possibly lose the numbers. So I'm just ... I'm not trying to scare you. I'm just trying to let you know, you know, as the Director of this department what can happen. Because if we don't get something to cover this ... Because your company is gonna be at a serious detriment.

Janice: Why can't you just continue it until they can get an opportunity to switch? That's what we can't understand.

Marsha: Okay let me explain to you why we can't do that. Because you signed a Letter of Agency with this other company ... Our company is not tariffed to do partial line billing. We do not ... we're carrying the traffic at a liability because we **don't** have permission to carry it at this point. For instance, when you signed that Letter of Agency with them, it voided out any authorization that we had to carry this traffic.

Janice: Well then, I don't understand how something on our letterhead could change that

Marsha: Your letterhead and the Letter of Authorization from our company. That's what

I'm asking you for. It's a standard Letter of Agency. You have to send over an addendum on company letter head, and you will have to send over the Letter of Authorization. We'll have it on file because we need to be covered in this interim period. I'm sure you, being in business, you know ... At this point, this company could be at a liability for carrying the traffic unauthorized. You know what I mean? It's just not worth the detriment. So, you know, we're calling you out of courtesy. We understand you are leaving our company completely. So you should look at it with some integrity here because we are at least trying to help you, so ... so that you will have a transition smoothly to this company.

Janice: Yeah, and I ... I appreciate it. I really do,

Marsha: But I can't ... I can't do that, ah, and then have our company at risk because we're carrying the traffic unauthorized. If ... It's risk free to you. It's going to keep your service up until its running. We know you're switching. We know you're leaving without a doubt. It's been stated on several calls. Why take the risk? Don't have the service go down, and not be able to call out, and waiting for them to transition it when you know that's gonna slow their process down. And your company will lose in the interim because you have so many numbers that are billing here. And that's the reason we need it. Just like when they come in, Janice, and they physically migrate the lines from us on to their company, the ... the information that they're using that you gave them would supercede what you sign with us today.

Janice: Uh-um, okay. Well, I just need to ...to, uh, get the signature of the CEO. I need to talk with him, and like I said, he's not available right now. Uh, can you just give us a little time and let me see if I can, uh ... see if I can reach him? I'll try.

Marsha: You know what? I'll let you try for a little bit here. And then, uh, if you can't ... because the thing of it is ... is that we don't have system over ... we don't have control over this system engineering. I've held this for as long as I could because I knew that Tim was talking to you about this, trying to get you resolution on it. At this point, it has to be urgent for the director of the whole department to call you, and let you know what's going on. And that's my stand-point right now. I have to get resolution either way, whether you want us to go ahead and proceed with the take-down, or whether you want us to keep it up and running. And this is normally a, uh, simple process because it's temporary. We know that you're leaving. We know that it's for the interim period. The only thing that we are asking you is do us the courtesy of being covered on this end trying to help you to get switched over to the other company.

Janice: Okay, well, I still need to talk to him. You understand that, I'm sure.

Marsha: Yes, I do. I have you authorized as the signer, so that's fine when you talk to him. Can I hold with you for a little bit while you actually try and call him'!

- Janice: What I will have to do is try to get **up** with him and have him call you. That's all that I can do. I know that I can't get him, but I can probably get a message to him to call you.
- Marsha: Okay, and if the lines arc down, I would suggest that you call them and try to find out what they're doing because they're ... they're still here. They're still here, and it's just something else. I ... I know that, and once again, that's fine. If that's what you need to do, that's fine. But I hope you understand that we tried to do everything that we could on this end to pretty much help you. And all these 800 numbers, and everything that's associated with all of the accounts are still here. Last we checked today, 800 numbers are not even been requested by this company as of today. **As** of this moment, everything is actively billing. So it's gonna cause a disruption to everything that you have.
- Sanice: **As** soon as I can get up with him
- Marsha: Okay and if it happens before then ... You understand what I'm saying. That's why I'm asking you if ... if you can get a message to him and possibly maybe hold me until he gets you.
- Janice: What is the problem with you just continuing to serve us until ...?
- Marsha: I explained that, I think, very thoroughly like three times here. We cannot carry the traffic. It's just like somebody walking out of the store with something, you know, and then asking for them -- the store owner -- asking to wait to pay for it.
- Janice: The store haven't received notice for it
- Marsha: Yes. *Yes*, we have got a disconnect from the local to disconnect the services. Our company is a non-contractional company, Sanice. We can't carry the traffic unauthorized. It's no shade of grey. Basically, we have permission or we don't. When you signed that letter, and when they sent over that disconnect, it voided out any authority that we had to carry the traffic. I can't tell you what to do over there. I've been with this company now for 6 years, and this business for 10. And the thing of it is, is that I'm trying to understand from you what your apprehension is. And I'm trying to help you keep the lines **up**, and I can't, and I wish I could, you know, basically. But on a professional standpoint, within our company right now -- and I'm sure you can understand that -- if it's for 20 minutes, if it's for an hour, if it's for end of business *day today, we have to get something from you on file* that we have permission to carry it temporarily in the interim period. And it's logical, I think. If I'm missing something ... It's a logical explanation, you know -- I would think -- even for you to understand that we cannot do it if it's gonna cause us a problem. And you have to understand something. You're a customer that's leaving our company.
- Sanice: But you were serving us yesterday. Why can't you continue to serve us?

Marsha: Because I can't. That's the reason why I called you today.

Janice: But, I mean, why? That's what I don't understand

Marsha: Because you signed that Letter of Agency with that other company. So, we are carrying the traffic, even though they haven't completed. We know you're going to Sprint, but they haven't completed it yet, Janice. They haven't even requested any of the 800 numbers yet. So we know that you're leaving, but we are just waiting for them to come and take it from us. They haven't done that. And then they send us ... And then they notify the local. The local sends us a disconnect on this end. So we're just sitting here. We're carrying the traffic without authorization. You cannot do that. And that's the reason why I wanted to take the opportunity and call you myself and explain to you in detail what it is, and the detriment that you are gonna end up with. So if I can get this form from you, so we can carry it temporarily until they can pick you up.

Janice: Okay, uh now, you tell me, uh, you're Marsha, right?

Marsha: Yes

Janice: You tell me I can get you on (702) 949-4019?

Marsha: Yes.

Janice: (800) 636-6670?

Marsha: And you need to call back as soon as possible. That's why I said I will hold with you for a little bit.

Janice: Well, I can't. That wouldn't do any good. I will have to get a message to him. That's not going ...

Marsha: Is there anybody else that you can talk ... contact that can give you permission to do this if you let them know that the company is gonna be at standstill? I'm sure as the owner, or your attorney, or somebody because you're gonna end up losing service. And then he's gonna come in as the owners of the company and everything is gonna be down and it was just a matter of signing.

Audiotape # I, Side A

[Second conversation with Marsha Gibbs of NOSIANI]

Janice: Janice Baynor.

Marsha: Hi Janice, this is Marsha. I'm back. Were you able to get him?

Janice: I have not called him. I expect him to come in here by 5:00 or 5:30

Marsha: Okay

Janice: But we haven't been able to get him

Marsha: Okay, so what do you want to

Janice: The golf course is about thirty miles away, so I don't know. Uh, if I try the house, I don't get anybody there.

Marsha: You don't get anybody?

Janice: Uh-uh.

Janice: His wife teaches at a Community College.

Marsha: Whoa.

Janice: SO I ...

Marsha: I know he's gonna be upset because these you know ... [word unclear] I checked the traffic within the last hour. And when was this company suppose to take him over? Do you know?

Janice: I ... I thought it was today, but I didn't know for sure. Cause I hadn't been doing ... I hadn't gotten involved in it until today.

Marsha: They have not even requested one number and we have like ...

Janice: I know.

Marsha: We have so many numbers that are still billing here

Janice: Yeah.

Marsha: So many ... [words unclear]

Janice: But you know that's ... that's good for you if they're still billing ... [words unclear].

Marsha: But you know what? The thing of it is that our company standpoint ... Because they're calling you from our Operation Cancel Department, that's not even the issue. The issue here is ... Yea. If we continue to bill you ... Yea, that will be a

benefit for our company. But can you imagine having, uh, our company being in that serious of a liability because we're carrying the traffic unauthorized? So you know that's worse. You're carrying traffic. you know, without consent.

Janice: Rut we authorized you to. I mean you were billing yesterday with us under the same ... [word unclear].

Marsha: Yea, but since then we have received that disconnect in the system

Janice: You just told me you had an alert from them

Marsha: No. We received an alert in the system from the local that you were switching vendors. The company ... We know that you're going with Sprint. Sprint has not physically picked up the lines yet, but your intent is to switch with them. The whole issue is the fact that, uh, until they request for us to disconnect it.

Janice [Words unclear].

Marsha: We're not. We're not.

Janice: Why?

Marsha: Because we got that disconnect from the local in our system that you're switching vendors.

Janice: Local is?

Marsha: That's Sprint. That automatically

Janice: I thought you hadn't heard from Sprint?

Marsha: No. Okay, Janice, the reason you were called in the first place by Dalphine is because there was an alert in our system that you were switching vendors, okay. We know that you're going to Sprint, okay, because through the conversations and because of the alert in the system. you're going to Sprint. But, we're looking at the traffic, and Sprint has not picked up the lines. So we have a disconnect ... Well, hold on.

Janice: We're under the same arrangement with you right now.

Marsha: But you are not right because we did not know it.

Sanice: But the fact that they notified you that's what I don't understand because they haven't actually switched anything. So if they notified you, what does that do to you? Tell me that I don't understand that.

Marsha: What that does to us is that totally omitted any authority that we had to carry any of the traffic because they sent that alert in through the system.

Janice: **Okay.**

Marsha: And they weren't ready to pick it up yet.

Janice: But what does it do to you as far as you billing us?

Marsha: We could be at a serious liability because right now we are billing you without authorization. See what had happened was is that they put that alert in too early before they could get it switched.

Janice: But you, you got the same authorization you had a week ago.

Marsha: But it was voided when we got ... We didn't know that you were switching a week ago. We didn't have an alert in the system until Dalphine called you.

Janice: But we didn't void it. So how can it get voided? We didn't do it ourselves

Marsha: When you signed ... When you ... Well, hold on Janice. When you signed the Letter of Authorization with Sprint, it voided out any authorization we had to carry the traffic.

Janice: But they haven't done it yet, so until they do it, you're still authorized by us.

Marsha: But we ... But we ... But we don't have proper authorization on file because [words unclear]. You're cutting me off before I can even answer you. I ... I mean, I'm the Director. I run this Department. I've been doing this with this company for 6 years.

Janice: Well, I've been doing this for 23

Marsha: I can't ... I can't ... Right. I can't tell you what your policies are and what your procedures are within that business. I wouldn't even attempt to try to do it because if you told me that this is what you needed to have and, you know, that's how your system is set up, and that's how, you know, the FCC guidelines are, I would just honor that. Because that's your company, and those are your policies and procedures. With our company ... They shouldn't have sent us ... It's like they're sending it as it as a disconnect, but they are just letting the lines sit here.

Janice: But, what are they sending a disconnect for?

Marsha: For us to disconnect the long distance from our company.

Janice: For which line?

Marsha: All of these lines. All of your service. Tideland. They sent an alert. We knew you were switching vendors when we called you because of the alert that was in the system.

Janice: I understand that you wouldn't have called if you didn't know that

Marsha: Right

Sanice: I understand all that. But I just don't understand what's the problem with you continuing to carry it until the switch gets made.

Marsha: Because we can't now. Because they have alerted us since then that we should disconnect. And they don't have them picked up yet.

Janice: [words unclear] ... disconnect

Marsha: Our ... We got a disconnect in our system from the local -- from your local company -- that you were switching vendors. It's the same person, Sprint. So, for instance ... Okay, right then they send it in to us, but they haven't taken anything from us yet. They haven't even made the request for the 800 numbers to be switched. So, you're technically ...

Janice: [Words unclear] ... long distance business until they switched

Marsha: It doesn't matter because you know what? The consequences you would have in carrying the traffic at a liability and billing you for a couple days is not worth the liability that would cost our company.

Janice: What kind of liability would you have, Marsha?

Marsha: Because we're carrying it unauthorized, our company could be fined.

Janice: By whom'?

Marsha: By the FCC

Janice: You're carrying it unauthorized?

Marsha: Yep. That's the reason. And they ... And the thing of it is, is that they should never have even alerted us if they weren't prepared to switch it.

Janice: Well, that's true. They shouldn't have.

Marsha: And, you know what I mean? I don't know what caused you to do this in the first place. But the thing of it is, is that this is not our fault. We're trying to help a

customer that is leaving us, you know, and, uh If you send in an addendum, then it's only until the company can come and pick you up.

Sanice: Ycah

Marsha: You're stating that clearly on the addendum. You're writing, "See attached addendum." This call is monitored.

Janice: The addendum ... The addendum ... I told you, you know. I don't mind saying ... I don't mind doing something on letterhead saying please carry us until ...

Marsha: But we have to have the Letter of Authorization io go with that because that's giving us authorization to carry it in the interim period. It can't. We can't just take that.

Janice: Marsha, May I say something? Will you not interrupt me if I try to say something?

Marsha: Yea, that's cause you interrupt me when I'm trying to explain something to you. And I'm just trying to let you know because you ... You're trying to come back at the point that we can't, you know ... Why can't you do this? And I'm trying to tell you why. It's frustrating bccause I'm trying to tell you why we can't. **And** I don't want your ... [word unclear] to get cut off.

Sanice: Okay,

Marsha: I don't want that for your company. I don't want that for you cause then you're gonna have to answer to them, you know, and we would much rather that you have a smooth transition. If you just ...

Janice: What if it may be as late as Monday? What would that do?

Marsha: We'll keep it **up** and running until they pick it up. And just to let you know how simple it is. as soon as they come in here ...

Janice: What if we don't ... if we don't sign anything and they don't get it switched until Monday?

Marsha: It would cause ... If you don't sign anything and they don't *get* it switched until Monday, it will cause disruption to everything that you have.

Janice: What

Marsha: And I've been waiting to call you back before we did anything on this end, hoping that everything will be alright and, you know, we can go ahead and get what we needed from you in order to get this done, and I can't. Can't get it from you.

Janice: I can't do it without ... without the CEO because he gave me a direct order not to, and I can't. I will get fired if I do it.

Marsha: Yeah. I know. That's why I don't want ... I know that, and that's fine. I'm gonna respect that. But the thing of it is, is that I hope to be called soon because as of this point ... You just said, you know, you been with that company for a long time. You probably have a high stature in that company. If you ... if you don't follow his procedures you said you can lose your job. I'm not gonna go *as* far as to say that I could lose my job because that is not the detriment for me at this point. Our company ... My standpoint is more of a company standpoint. Because you are leaving, and we got the request. They shouldn't have sent it in to us before they were ready to do this because then we wouldn't be having this conversation right now.

Janice: Then what would you be doing? You will continue to be billing us, and they would be in the process of making the switch.

Marsha: If they hadn't alerted us.

Janice: We are right now

Marsha: If they hadn't alerted us.

Janice: Yea, that's what I mean. So we ... So they'd be in the process of switching. You wouldn't know the difference. So you're saying ...?

Marsha: Yeah, usually when we get things the

Janice: [words unclear] ... operating without authorization from us

Marsha: No, usually when we get these systems, and usually when the vendors send it in to us, the ... [word unclear] is already cancelled. You see what I'm saying? It's a matter of canceling it out in the system. The only reason you were called is because your account was red flagged because you still have traffic with us.

Janice: Well, but if they hadn't ... you hadn't gotten that disconnect order, then you'd still be billing us and they'd be in the process of switching and you'd never known it.

Marsha: Right.

Janice: Then you'd be

Marsha: Right. cause normally

Janice: Providing service with no authorization

Marsha: No, that's not what it would have been because they wouldn't have sent it in yet. They wouldn't have sent it until they were ready to send it.

Janice: That's not making any sense

Marsha: They wouldn't have normally ... That company shouldn't have sent us in a cancel until after they were ready to pull all the lines.

Janice: But, what difference ...?

Marsha: Normally, they cancel

Janice: What difference?

Marsha: I am sorry

Janice: What difference does it make if they send in the cancel? If they hadn't sent in the cancel and they were in the process of switching it then everything would be fine.

Marsha: But we wouldn't have even known that they were switching it. But usually, it would have been where everything ... [words unclear]. Like this morning, I told you, okay we're gonna get all the lines ported over today. Okay and they were ready to pick that up. And we had a request in the system that this company was gonna pick you up. Cause it would show us in the system that they're all on "D" status, which is disconnect status. And that, ah, there is a company in here for the 800 numbers, and we were shown that they were actually requesting it. Then you would have been fine. Because if we would have taken it down, then they were ready to pick it up. In this case, they sent it over here to us and they haven't even requested any of the 800 numbers and then on most locations -- all of them -- still have active calls. Last calls they introduced yesterday and today.

Janice: But Sprint tells me that they didn't send over an order

Marsha: Yea, they did. How else would we know? Logically. Logically, Janice. If you think about it, Janice, how else would we know?

Janice: Because one of the lines has been switched, and the rest of them haven't. Uh, who signed the disconnect order, cause they tell me at Sprint they **didn't** send one?

Marsha: I don't know how they do it. I don't know what their policy is, but our company was alerted that you were switching because if it wouldn't have been, we wouldn't have called and told you. Okay, if you think about it logically, if ... Why would we call you and tell you?

Janice: Would you like me to ask him to call you at those numbers you gave me? Is that the easiest thing to do?

Marsha: Yca, you can ask him to call me. Hopefully, he gets to me beforehand.

Janice: Alright, I'll ... **As soon** as I can get a hold of him, **I** will. Okay?

Marsha: Okay, thank you.

Janice: Thanks

APPENDIX D

NELSON ENGINEERING TRANSCRIPT

Audio Tape # 4, Side A

Julie: Good morning, Nelson Engineering.

Marsha: Hi, could I speak to Julie, please?

Julie: This is Julie.

Marsha: Hi, Julie. This is Marsha Gibbs. I'm calling from QuantumLink Communications. I am Greg Stewart's directing manager. I have to let you know that calls are monitored for quality assurance purposes. I wanted to call you myself -- I **know** that he spoke to you several times -- before we go proceeding to shut the lines down and let you know that the lines are still billing here with our company. The company that you have switched to has not switched your services over yet. No fault to them. It is probably that we got our alert a little bit too soon before they could actually complete it. We are still billing you unfortunately on most of the lines on your local and your long distance. And so the thing of it is that if I go in there ... Because the lines are still physically PIC'd here to us. We're still physically your carrier, even though you went out the door from us a long time ago. Basically, we are still carrying the traffic. We can't take anything back from them because it's still here. That's the principle why we need the Letter of Authorization for the interim period only, until this company can come in and pick you up. This way you have a full transition from one company to another and you don't have to worry about a disruption. And I had asked them if they even had a chance to talk to you because they should have attached an explicit addendum with it stating exactly that it is for a short period of time.

Julie: I didn't do that.

Marsha: I don't think he got a chance to tell you, but I wanted to talk to you about it myself because I feel more comfortable about this. Because I wanted to know what caused you to leave us in the first place, even though it's like out of my department. The last thing that we want to do, even though this is not our fault at this point, is have you lose service and then there is complete bad light that shines on our company.

Julie: There shouldn't be any reason that we should lose service.

Marsha: The reason is because you signed a Letter of Agency with this other company. Our company -- we don't have authorization to carry the traffic anymore, even though the lines are still physically billing here with us. We don't have permission to carry it.

Julie: I have never had a problem like that before when I switched from someone else to you guys. I never had to sign anything.

Marsha: You know why? Because here, recently, with all the FCC mandates and because of all the slamming that's going on, any company ... Our company has not chosen to do that. So in essence, we can carry traffic for 15 minutes, Julie, without authorization. I wanted to have an opportunity to call you this morning. I was in a meeting when he spoke to you. And so ...

Julie: This does not say anything

Marsha: Right. Let me tell you why. Because it is a standard Letter of Agency. Every company that has things approved by the FCC has one standard Letter of Agency on file. So in essence, what we wanted you to do -- because it is our standard Letter of Agency ... As you know, our company ... We do not have contracts, term plans, or agreements. So you are in control of this situation. As soon as that company comes in with the information that we provided for them and they take your services from us, ties will be severed. This is what I want you to do. I want you to put on the form, "See attached addendum letter." And on the addendum letter ... If you can grab it, I'll tell you exactly what to write because you have to state the company that you are switching to, that it's only for a short period of time until they can pick it up. This call is monitored in its entirety.

Julie: You're recording it. I am not. So I can't just approve anything.

Marsha: You put, "See attached addendum," and then you put the addendum letter with it until we get what we need to keep the services up and running. Until the company can get you switched. As soon as they come in and switch your services, all your ties will be severed from our company.

Julie: I called the Public Utilities Commission, and they said that I don't have to sign anything like this. They don't know where you guys are coming **up** with this.

[Tape repeats]

Marsha: Well, I don't know who you talked to within that company there, but I hope you understand, being in business yourself. You're leaving our company, and I think that your company can show some kind of integrity here. We're at least trying to call you to let you know that the company did not pick you up and we can help you if you want us to. You see what I am saying? So I don't see what the harm would be in that. You know we're not trying to ... Because normally, this is our Cancel Department. Operations Cancel. What we do is, we'll see an account in the system, and basically just cancel the shell out in the system, unless it is red flagged to a manager's office if it has traffic. So the thing of it is, you're kind of between a rock and a hard place because you want to leave our company. Basically, you have a bad taste in your mouth about our company, yet you're still here. The company that you have switched to has not picked you up yet. That's not our fault. What caused you to leave is. We're calling you out of courtesy just to ask you if you wanted us carry it in the interim period until they can pick you up. Whether it's one day, whether it's two days ... Whatever their timeline is. You've not heard me say one bad thing about the company because I'm sure it's a good company that you're switching to. I'm just telling you what we need to do in order to help you on this end. Otherwise, it'll cause a disruption to everything that you have. And with us carrying the local toll right now ... And I don't know who advised you of that when you called that facility because if you're still PIC'd here with us for local, you are still PIC'd here for long distance. They have not even requested it yet, but we have a disconnection order.

Julie: You have a disconnect order from who?

Marsha: It comes into our company internally within the local company within your area. So in essence, we knew that you were switching vendors when he called you. We just didn't have a request from the company yet, and then he found out from you it was Qwest. We look at the situation and investigate a little further and that was who you were switching to. And Qwest is a good company. The thing of it is that we probably got our alert a little bit too soon before they could actually complete it. So my issue at hand is that I wanted to call you myself, tell you the situation of what's going on and the detriment. I did go to my director, which is VP of this company, and I did tell him, "I need to talk to her first before we proceed in anything because the lines are still billing here with us." And so if you want, attach the addendum letter, write it out explicitly that it's for a short term time. I'll tell you exactly what to write. You date it and sign it. Put on the Letter of Authorization, "See attached addendum." I will give you my backline, Julie, and we will track the traffic. I would say, today is the 23rd. What we will do is, I will check the traffic early morning on the 25th, because they should have it by then, and that way we'll work together to get you transitioned over there. I apologize for any inconvenience that was caused by my company. The thing of it is, the only thing that we can do at this point is make sure that you have been transitioned over to Qwest.

- Julie: I don't know. I don't like this at all. I don't understand why I have to do that when I've never had to do it before. I do have a bad taste in my mouth about this company.
- Marsha: Well I understand that, but you have to understand, too. Right now you are leaving our company. I don't know any company out there that calls a customer, lets them know that they still have traffic, and **asks** them if they want them to keep it up and running until the new company can get them switched.
- Julie: Well that's just standard. Everyone does that.
- Marsha: No. everyone does not do that. Not anymore.
- Julie: All the ones that have integrity do.
- Marsha: Well the thing of it is ... You know what? I wouldn't dare come in ... And I think I've been as very professional and very courteous with you as possible on this phone. I wouldn't dare come in and tell you what your policies and procedures are within your industry or within your business.
- Julie: But I **am** saying that I have never had to do this before.
- Marsha: I understand that, and I called you to explain to you why you need it, because technically, we do not have authorization to carry this traffic. You are switching from **our** company. It's still sitting in here with us on the local end as well as long distance, and so the only thing that we are trying to do is make sure that we're covered in that interim period.
- Julie: I think that you guys could come up with an interim one if this
- Marsha: Well unfortunately, with the FCC. you don't have different Letters of Authorization for different reasons. There is a standard Letter of Agency with our company. It states very clearly at the **top** of the Letter of Authorization that our company -- we don't have any contracts, term plans or agreements, so at any moment a customer can select a switch at any point and time. That's your coverage right there. That's the reason why when they came and you signed that Letter of Agency, we were out of the picture just that quick.
- Julie: A customer does not permit QLC to change customer service to another telecommunications company

Marsha: It is a standard Letter of Agency: but the top of it supercedes anything. With our company, you don't have contracts, tenn plans, or agreements. So at any point in time you are not 100% satisfied, we have to pay your PIC fee and coordinate your switch anyway. We did that. We released everything. The company that you switched to, they have not come in to pick up the local and long distance from us yet. So what we did was we called you out of courtesy, okay it might take them a little longer. We will carry the traffic until they can pick you up. You have to understand something, anything that you would sign with any other carrier and they have your permission to do it, it will supercede anything that you would sign here with us today because you are in control of the situation. **At** any moment you decide you want to go and you gave another company permission, it going to supercede anything that you would sign here with us because that is our company policy. My main reason is that I really didn't call to get into a lot of issues...

[Break in conversation]

Julie: I just called Qwest and they have our lines as of the 17th.

Marsha: They don't. Okay, they're stilling billing here with us. They haven't completed this yet. So the thing of it is, is that this was a simple call. If you want us to go ahead and take it down, we'll do that. but they haven't. It still had **A** codes and everything. If you're talking to your salesperson. he's probably talking to a call center because he can't see the actual calls on your account. They submit it for the order. That is why I said to you it probably won't take them any more than a day or so to get this done, but they haven't completed it yet, so you are still physically PIC'd here to us. There are two codes. There is your PIC code. which is through your local. There is a CIC code, which differentiates one carrier from another. That had not been completed yet. **At** this point and time I guess that you don't want us to keep your lines up and running.

Julie: No I guess not because Qwest told me they have it.

Marsha: Okay they don't have them, so this is the thing. What is going to happen is it is going to cause a disruption to everything that you have, as well as the local phone, too, because they haven't completed it. (402) 241-0340 is still billing here, as well as 1257, 6068, 6927. I am giving you the last four digits. The calling cards don't matter, and (402) 594-6935 ... Now let me see what's going on with your 800 numbers at this point? Okay now MCI is requesting your 800 number. Are they supposed to?

Julie: Yes.

Marsha: **Okay.** So you are going to MCI for your long distance?

Julie: Yes.

Marsha: Oh okay. See they need to switch ... No, they requested the 800 numbers. The only thing that we are concerned about is just working the land lines. They are also PIC'd here to us. See the local -- which brings me back to my point, which I explained to you earlier. The local has to acknowledge who you switched to because you are in control of the situation. They have the PIC code set up for MCI to come in and migrate the services from us to them. Now they did their job. The local. Now it is **up** to MCI to make sure that **all** the lines are properly migrated from our company to their company because we had you for local and long distance. I'm thinking that might be some of the time barrier that's maybe taking them a day or so. The 800 number is already gone. The only thing that I ~~am~~ concerned about is the five land lines that you had. So they're still physically PIC'd here on your local and long distance toll. So what I want you to do is send a letter of cancellation because this call is monitored and recorded. Because very few times ever have a customer say **take** it down when it is billing here because really if you think about it, I have absolutely nothing *to* gain either way. I'm in neutral. My job isn't contingent on anything. **It's** just to get you the information that is here at hand and **ask** you what you want us to do with it. Because we have already lost your business, that's my only job right now. So I take that you want us to just go ahead and shut off the local and long distance on those land lines.

Julic: I'm not saying anything. Tam done with this call thing. [Hangs up].

Marsha: Whatever. Fine. I hate this.

COMPANY	BTN	DATE OF SWITCH FROM NOS/ANI	DATE OF SWITCH BACK TO NOS/ANI
Advanced Tex 22040 Gratiot Rd. Merrill, MI 48637	989/643-5526	4/16/02	N/A ⁶¹
Al-Tek Transp. Rte. 70 Smithton Rd. Smithton, PA 15479	724/872-6709	4/1/02	4/3/02 ⁶²
Appeal Insurance Company 5548 Naylor Court Norcross, GA 10092	770/416-0975	12/3/01	N/A
Arirconsin Group, Inc., d/b/a Crandon Nursing Home 105 West Pioneer St. Crandon, WI 48637	715/478-3324	4/1/02	N/A ⁶³
Bank of the Sierra 86 North Main Street Porterville, CA 93257	559/782-4900	5/1/02	5/16/02 ⁶⁴
Becker Wagonmaster, Inc. 4611 Hamilton Rd. Allentown, PA 18103	610/395-3745	4/3/02	N/A
Century 21 Assoc. 308 East High St.	717/243-5325	3/19/02	3/29/02 ⁶⁵

⁶¹ "N/A" designates that customer was not successfully switched back to NOS/ANI

⁶² Customer switched away from NOS/ANI again on 4/17/02 and added a freeze to account

⁶³ On 4/13/02, NOS/ANI apparently submitted an LOA to switch the consumer back to its services, but the LOA was rejected because the consumer's services had just been changed from NOS/ANI. According to Frontier, thereafter, it received two different telephone calls from **people** claiming to be Ms. Spencer and requesting that the consumer be switched back to NOS/ANI. Ms. Spencer confirmed that she did not authorize the requested changes, and on April 15, 2002, went to Frontier's office and signed a freeze on the account.

Customer switched **away** from NOS/ANI again on 7/16/02.

⁶⁵ Customer switched away from NOS/ANI again on 4/11/02 and added a freeze to account

Carlisle, PA 17013			
Chicago Title Insur. Co. 75 Federal St., Ste. 410 Boston, MA 02110	603/472-3226	9/12/02	N/A
EarthAction Alerts Network 30 Cottage St. Amherst, MA 01002	413/549-8118	6/6/02	6/11/02 ⁶⁶
Genisys Financial d/b/a Magellan Mortgage 485 E. 17 th St. Costa Mesa, CA 92627	949/715-1155	4/15/02	4/17/02 ⁶⁷
Nelson Engineering 108 E. 23 rd S. Sioux City, NE 68776	402/241-0340	4/17/02	N/A
The Rank of Yellville P.O. Box 325 Yellville, AK 72687	870/449-4231	4/3/02	N/A
Tri-V Services 607118 Mile Road Sterling Heights, MI 48314	586/323-9916	5/02	6/02 ⁶⁸

⁶⁶ Customer switched away from NOS/ANI again on 6/25/02.

⁶⁷ Customer switched away from NOS/ANI again on 5/9/02.

⁶⁸ Customer switched away from NOS/ANI again in 8/02